

HUMBLE  
PROPOSALS  
TO THE  
PARLIAMENT  
Now Assembled.

Whereby the Profession of the *CIVIL LAW* may  
be used in certain Cases, to the great ease and benefit of the  
People, without looking back to *Ecclesiacy*, or any thing  
that is abolished, or making any use of the *Popes Law*,  
commonly called the *The Carron Law*, or taking away any  
thing from the *Common Law*, and in a perfect com-  
pliance with this present Government.

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LONDON,

Printed by E. C. for R. Royston at the Angel in *Wine-lane*, 1656.

192  
108  
215

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NUMBER

PROPOSALS

TO THE

PARLIAMENT

Now Assembled

Whereby the Parliament of Great Britain  
doth hereby give power unto the  
said Commissioners to make such  
regulations as they shall think fit  
for the better management of the  
said Affairs, and to do all such  
things as shall be necessary for  
the execution of the said Acts.

By Appointment

LONDON

Printed by J. Smith, in the Strand, 1756.



HUMBLE  
PROPOSALS  
TO THE  
PARLIAMENT  
Now Assembled.

**F**irst and principally, they do declare, That they have so far razed out of their thoughts any power, whether *Civil* or *Ecclesiastical*, that has been abolished, and do so little intend the use of the *Canon Law*, and least of all to abridge the *Common Law* in any thing, that they are very willing, that in any *Act* that shall be made for the exercise of their Profession, some such clauses may be inserted, whereby the people of this Nation may be satisfied in these particulars;

I.

1. That it is done for the continuance of the study of the *Civil Law* only, that is so useful for determining matters done upon the Sea, correspondence with foreign Nations, and publick Transactions both of Peace and War.

A 2

2. That

2. That all their proceedings shall go in the name and style of the present Government, and stamp'd with such inscription and seal, as shall be allowed.

3. That it shall not be lawful for any, either *Judge* or *Advocate* of that Profession, to vouch or cite in Court for authority any part of the *Canon Law*, nor any *Ecclesiastical Law* heretofore of use in this Nation, but shall vouch the *Civil Law* only.

4. That if in the cases permitted them to exercise their Profession in, there be any Law of the Nation expresse in the case, no *Judge* or *Advocate* shall presume to cite the *Civil Law* to the contrary, but shall leave it to be decided by the established Law of the Nation.

5. That thereby nothing is intended to be granted to the *Civilians*, that by any Act of Parliament, or the ancient usages of this Nation has belonged to the consience of the *Common Law*.

II. Secondly, They do so perfectly desire to conform to the desires of the several Countreys of this Common-wealth, to have justice administred within the Countrey without coming to *London*, that as to the doing of justice in the cases hereunder mentioned, they shall be ready to serve them in such places of the Countrey as the Parliament shall appoint, as formerly they did, though under another capacity and notion then heretofore.

III. Thirdly, They do not aime to grasp or reach at any thing which has not alwaies belonged unto them heretofore, or which any other Court or Law can challenge; but do justly hope, that what they Petition for, shall be continued in them, because they have a certain rule for those cases in the *Civil Law*, and the *Common Law* has none.

IV. Fourthly, The several matters that they desire to exercise their profession in, are none of them *Papal* or *Episcopal*, but such as will commonly happen amongst the people under this present Government, and which all well ordered States, for the quiet and satisfaction of the people, do provide for.

These

These things being premised, the matters whereof they desire to have the consistance and trial in the several Countreys, are these ensuing ;

1. *Probats of Wills*, as to personal Estate only.

This has alwaies undenably belonged unto the Courts of the *Civil Law* only.

2. Granting of *Administrations*, where persons dye intestate, and without any *Will*.

3. To call for *Inventaries* and *Accounts* upon them.

Of these two there has never been any question neither.

4. Distribution of *Portions* out of the *Goods* and *Personal Estate* of such as shall dye without any *Will* made, amongst Wife, Children, or Kindred.

Of this there hath been some question made, whether the Courts of the *Civil Law* might do it or no ; and the Courts at *Westminster* have sometimes sent Prohibitions to stop them from proceeding to execute any such power. But yet they never undertook to distribute Portions themselves, nor have, or pretend to have any Rules for it. And in cases where *Prohibitions* have not come (as not one in a hundred Cases has) distributions have been constantly for many Ages practised by the Courts of the *Civil Law*. That therefore there is a necessity to settle them finally somewhere, and rather in the *Civil Law* then any were else : there be these Reasons ;

1. Because the *Common Law* for want of Rule and practise, cannot order them, nor ever did.

2. Because the *Civil Law* has certain Rules for them in every Case; the Cases whereof are very many, and some very difficult.

3. Because else the Administrator, that gets the Administration, after debts paid, will keep all the rest to himselfe, though there be never so many as near of Kin as he; and so it may happen, that the eldest son that has all the Land, by getting Administration, may have all the Goods too, and the rest of the children have nothing out of their Fathers Estate to keep them; for if a *Prohibition* come, the younger children are without any remedy.

4. Because this matter of Distributions is but an appendant or accessory to Administrations, and therefore it is requisite, that both should be decided by one and the same *Judicatory*. And if practise and knowledge may make out to any a Title to them; the *Civilians* have most to say for themselves, being alwaies practised, and having most skill in them both.

### 5. Causes of Marriage, Divorce, and Alimony.

Of the first there will be use, when two persons have by *formal promise* each to other contracted themselves in marriage, so that nothing is wanting to make them Man and Wife, but the ceremony of marrying, and yet the one denies such promise, or refuses to perform it; or happily marries another man or woman.

This may be so ruled, as not to intrench or derogate from the late *Act of Mariages*, if that be thought fit to continue of force still; for the solemnity of Marrying may still be the same, as that *Act* appointeth. This new intended provision is but to supply those Cases, which that *Act* has declared



declared nothing in. Besides, the subjects hereby shall have but a double remedy, leaving them to go to the *Justices* or *Sessions*, or to this new *Judiciary*; But where the complaint is first entered, it shall be a Bar to hinder the other from proceeding.

Of the second, namely, *Divorces*, there is use, when two persons marry one another, that for near kindred or alliance, or some other *Legal impediment*, are not capable to intermarry; or when one married person is quite forsaken by the other, and is not heard of in many years, and is reported to be dead; or when such irreconcilable enmity is hapned between them, that they may be better severed as to cohabitation, then permitted to live together.

That of *Alimony* is useful, when the Husband will live asunder from his Wife, and yet will allow her no maintenance, or uses her with more cruelty then can be endured. In which case the duty of cohabitation may be taken off, and the Husband may be enjoined to allow the Wife *Alimony* and maintenance to such proportion as his Estate can bear.

Of these severall Cases the *Civil Law* has always had the Consistance, the *Common Law* never did pretend to any of them. The *Chancery* has by special orders of late ordered *Alimony*, but that was because the *Ecclesiastical Courts* were abolished, and was intended only to serve for a present supply of justice, till a perfect settlement could be made, which now wee hope for.

6. Causes of *Legacies* given by last Wills and Testaments, of Money, Goods, Chattels or other personall Estate; not of Lands, or any Freehold, which is recoverable only at *Common Law*.

Since the fall of *Ecclesiastical Jurisdiction*, these Causes have been *pro tempore* put into severall hands to judge them, but intended for a present supply of justice only, and not to remain any longer there, then till a more perfect settlement could be made by Parliament.

7. Causes of *Tithe*, for so long time as that kinde of maintenance shall be kept up, excepting the *Tithe* of *Corn* and *Hay*, which is recoverable at *Common Law* by *Treble* damages.

For the recovery hereof since the taking away of the *Ecclesiastical Power*, to prevent a failure of justice, severall Orders have been made and directions given to order them by other hands, but intended to endure no longer, then till a perfect settlement should be made.

8. Repairs of *Churches*, and the payment of Rates towards them, together with the keeping up of *Parsonage* and *Vicaridge* houses; which were constantly ordered by the Courts of the *Civil Law*, and never otherwise: But only of late some orders were made in them, as in other Cases above mentioned, for supply of justice for the present, to prevent imminent and daily mischiefs.

These



These are the few Cases that the *Civilians* are Petitioners-for, to exercise their Profession in, throughout the several Countreys of this Common-wealth: In order to which, they pray,

1. That any Act or Bill, that shall be brought into the Parliament for the settling of these Cases or any of them in any Judicatory in the Countrey, may have a Clause or a Proviso in it; That the said Cases shall be tryed and judged by *Civilians*, and by the Rules of the Civil Law, as formerly they have been.

2. That such a Coercive Power may be granted to the Judges thereof, as may be sufficient to make men appear to answer in the said severall and respective Cases, and to do and perform what shall be adjudg'd therein, that their keeping of Courts may not be in vain.

3. That if any shall finde themselves aggrieved by any final and diffinitive judgement, that shall be given upon the whole matter, and would run the hazard of a second Trial, they may have liberty to appeal to the Lord Protector in the High Court of Chancery, and the Cause to be tryed by a Commission of Delegates in such manner, as alwaies formerly has been.

This may seem burthensome, that all Appeals should be to London. But the difficulty and charge thereof will be such a check to contentious spirits, that but upon weighty and just grounds, and in matters of moment, men will not be so easily tempted to appeal as they will when the charge is light, and the trouble not so great.

Which Cases except they be settled upon the Professors of the Civil Law, thereby to employ  
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themselves in, and to keep that learning on foot still, so useful for all *Maritime* affairs, and public Negotiations with *foreign States*, that learning will be irrecoverably lost for ever; and one whole calling, that the youth of this Nation was heretofore bred in and advanced by, will be quite taken away; for other means of preserving it will not be found in a practical way, which only can make it useful to this *Common-wealth*.

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**THE END.**

